

Service Date: February 27, 1979

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

In the Matter of the Application of)	DOCKET No. 6616
the City of Livingston for authority)	
to increase rates for sewer service.)	FINAL ORDER No. 4479a

APPEARANCES

For The Applicant:

Robert L. Jovick, Attorney at Law, 108 West Callender Street, Livingston, Montana 59047

For The Protestants:

Geoffrey L. Brazier, Montana Consumer Counsel, 34 W. Sixth Avenue, Helena, Montana 59601

For The Commission:

Robert F. W. Smith, Staff Attorney
James P. Dwyer, Rate Analyst

Before:

James R. Shea, Commissioner, Presiding Officer
George Turman, Commissioner
Thomas J. Schneider, Commissioner

APPLICATIONS AND PROCEEDINGS

1. On September 14, 1978, the City of Livingston (Applicant) filed a petition with the Montana Public Service Commission (PSC) requesting that the PSC authorize Applicant to increase its sewer rates for additional revenue to proceed with engineering and testing for design of a secondary waste water treatment facility.

2. On September 29, 1978, the PSC issued a notice of proposed public hearing, notifying the Applicant's customers of the filing of the application and of the opportunity to be heard on the application if so requested. A request for hearing was received in this proceeding.

3. On October 18, 1978, the Montana Consumer Counsel (MCC) filed a protest and request for public hearing in this docket.

4. On October 24, 1978, the MCC sent data requests to the Applicant.

5. On November 6, 1978, the Applicant filed a motion for temporary rate increase in this docket. The Consumer Counsel filed a reply and objection to the motion for temporary rate increase on November 8, 1978.

6. On November 6, 1978, a Notice of Public Hearing in Docket No. 6616 was issued. This notice set the matter for hearing on Tuesday, December 5, 1978, at 10:00 a.m. in the Community Room, Park County Courthouse in Livingston.

7. On November 8, 1978, the applicant filed answers to the MCC data request.

8. In the agenda meeting of November 15, 1978, the Commission deferred action on the motion for interim rate relief, due to the proximity of the hearing date, the size of the increase, and the proposed procedural rules on interim relief.

9. A public hearing on this matter was conducted in the Community Room of the Park County Courthouse in Livingston, Montana on Tuesday, December 5, 1978.

10. The hearing was conducted under the Commission's procedural rules for contested cases as contained in the Administrative Rules of Montana.

11. The Applicant presented four witnesses: Jerry Tacke, City Superintendent; the Honorable Harold Guthrie, Mayor; Mr. John Conell, for Christian, Spring, Sielbach & Associates; and Jennie Adams, City Clerk.

12. The Protestant, MCC, participated by way of discovery, cross-examination, motions and objections.

13. At the close of proceedings, the Applicant renewed its motion for temporary rate increase, which was objected to by MCC.

14. MCC moved to strike from any tariff resulting from these proceedings proposed tariff provision (e) which purports to impose liability upon non-users.

The Commission having taken the evidence and heard the parties and being fully advised in the premises makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Exhibit #3 of the City was a contract between the City and the Engineering firm of Christian, Spring, & Sielbach (CS & S) of Billings, Montana, for the design of a secondary waste water treatment facility. Such contract legally obligates and binds the City, as set forth in Amendment II to the Contract, to pay the engineer monthly as work is completed upon the design phase with the total obligation for the design phase under the EPA Step 2 Program being \$167,200.00.

John Conell of the CS & S engineering firm estimated that 80% of design work under Step II would be completed by June 30, 1979, with final work completed, and final payments due, in the fall of 1979. Mr. Conell stated that the engineering firm expected and would require the City to abide by its payment obligations, under the Contract.

Mr. Conell testified further that he did not expect the City to be able to pay the EPA Step II engineering fees from proceeds of the sale of bonds for the project because the final design had to be approved by the State and EPA after being submitted in the fall of 1979, and no bonds would be sold for the construction until sometime in 1980.

2. The CS & S engineering firm recommended as a part of the design phase for the treatment plant, operation of a pilot plant, in operation as of the hearing date, for testing and analysis relative to design at an estimated cost of \$21,000.00, at least \$14,000.00 of which had already been spent as of the hearing date.

3. A user charge system will be required to have been submitted to EPA by July 1, 1979, for which the City would incur additional engineering expenses of \$1,500.00 with CS & S.

4. Measurable proposed changes are reflected both by City's Exhibit 9 and by Exhibit 2, entitled Worksheet of Sewer 1978-79 Fiscal Estimate of Secondary Plant Related Expenses and Grant Revenue. Exhibit 2 Worksheet changes have previously been set forth in findings except for rebuilding of existing clarifier sweep at a cost of \$6,062.50 and holding lagoon at a cost of \$10,000. The City Superintendent stated that the present clarifier sweep must be repaired now to minimally keep the present treatment plant in operation to keep in compliance with the present discharge permit issued by the State Department of Health so that holding capacity is made when the City works upon and by-passes the sewage plant. The lagoon may also

be used at times during the course of secondary treatment construction, but would otherwise also be limited to this special period of use. Costs of the repair to the clarifier sweep and the lagoon are necessary; no other City funds are available for this necessary repair since the balance in the sewer fund is in a deficit position.

5. Estimated costs associated with the engineering and testing for design can be summarized as follows:

Engineering Step II	\$167,200
Pilot Plant	21,000
User Charge System	1,500
Repair Clarifier	6,062
Lagoon	<u>10,000</u>
TOTAL COST	\$205,762

6. EPA reimbursement at 75% can be summarized as follows:

Engineering Step II	\$125,400
Pilot Plant	15,750
User Charge System	1,125
Repair Clarifier	4,547
Lagoon	<u>- 0 -</u>
TOTAL EPA REIMBURSEMENT	\$146,822

7. The amount of funds to be generated from sewer revenues can be calculated as follows:

Total Cost	\$205,762
Less EPA 75%	<u>146,822</u>
Annual Revenue Increase	<u>\$ 58,940</u>

8. In a normal rate case proceeding, this Commission would not allow the Applicant to realize capital costs in an abbreviated time frame. However, in this proceeding one has to account for the more than eight years of planning, hearings and effort of the applicant all of which proceeded without the specter of Public Service Commission regulation. As the end of this process of engineering and testing for design approached, PSC regulation was thrust upon municipalities by the Montana Supreme Court. A normal course of events would dictate that the Commission order applicant to include these costs in the capital costs to be provided for by a future bond issuance. However, in light of the EPA mandate and the engineers contract, the

Commission must insure that applicant has the funds available to meet the associated costs and contract demands in the fall of 1979. Estimating the fall date to be late October 1979, the Commission must accelerate the annual revenue by a factor of 4/3 thereby arriving at the following capital costs:

$$58,920 \times 4/3 = \underline{\$78,558}$$

9. Exhibit 9 presented by the City was described as the sewer department budget for fiscal year 1979. Exhibit 10 presented by the City was described as the sewer department actual expenses and revenues for fiscal year 1978. In analyzing these exhibits it is readily ascertainable that the salary expense for fiscal year 1979 is \$13,450 larger than the previous year's expense.

10. This Commission finds that the total revenue increase requirement is as follows:

FY 79 salaries increase	\$13,450
Factored Capital Costs	<u>78,558</u>
	<u>\$92,008</u>

11. The Applicant sponsored Exhibit No. 1 which was an attempt to derive a rate structure consistent with the revenue requirement. The revenue calculation contained in Exhibit I substantially changed the rate structure (relationship between the usage blocks.) However, in the absence of an adequate cost of service study, or evidence to support a change in rate structure, the Commission can only grant a rate structure in the form of an overall percentage increase. This is calculated as follows:

Revenue Increase Requirement	<u>92,008</u>
FY 78 Revenues (Ex. #10)	59,304 = 155%

The Commission finds that applicants revenue increase requirement percentage is 155%.

12. The Commission also determines that, in the absence of a more clearly delineated case on the Applicant's part, and lacking even an approximation of the date of the bond sale and commencement of construction on this project, the interests of the Applicant's customers would be best served by a reduction from the 155% rate increase needed to pay Step II engineering costs and wage increases to a 22.7% increase once engineering costs are paid.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and subject matter in this proceeding.
2. The Commission afforded all parties interested in this proceeding proper notice and an opportunity to participate.
3. The rates approved herein are reasonable, just, and proper.

ORDER

NOW THEREFORE, at a session of the Public Service Commission, Department of Public Service Regulation of the State of Montana, held in its offices at 1227 11th Avenue, Helena, Montana, on the 20th day of February, 1979, there being present a quorum of Commissioners, there came regularly before the Commission for final action the matters and things in Docket No. 6616, and the Commission being fully advised in the premises;

IT IS ORDERED by the Commission that the City of Livingston is authorized to increase its water rates as follows:

Gallons of Water Used	
0 to 3,000	\$3.44
for the next 27,000	.38/1,000 gal.
for the next 70,000	.15/1,000 gal.
over 100,000	.038/1,000 gal.

IT IS FURTHER ORDERED, that upon payment in full of Step II engineering costs, the Applicant shall reduce its rates to the following level and so inform the Commission by filing new tariffs to reflect the following rates:

Gallons of Water Used	
0 to 3,000	\$1.66
for the next 27,000	.18/1,000 gal.
for the next 70,000	.07/1,000 gal.
over 100,000	.018/1,000 gal.

IT IS FURTHER ORDERED that proposed tariff provision (e) be stricken from applicant's rules and regulations.

IT IS FURTHER ORDERED that this increase be effective for services rendered on and after March 1, 1979.

IT IS FURTHER ORDERED, that a full, true and correct copy of this order be sent forthwith to the Applicant and to all other appearances herein.

THE FOREGOING ORDER was adopted by the Department of Public Service Regulation of the State of Montana, Public Service Commission, IN OPEN SESSION at Helena, Montana, this 20th day of February, 1979, by a vote of 5 - 0.

James R. Shea, Commissioner,
Presiding Officer

George Turman, Commissioner

Clyde Jarvis, Commissioner

Gordon E. Bollinger, Chairman

Thomas J. Schneider, Commissioner

ATTEST:

Madeline L. Cottrill
Commission Secretary

(SEAL)

NOTE: You are entitled to judicial review of the final decision in this matter. If no Motion for Reconsideration is filed, judicial review may be obtained by filing a petition for review within thirty (30) days from the service of this order. If a Motion for Reconsideration is filed, a Commission order is final for purpose of appeal upon the entry of a ruling on that motion, or upon the passage of ten (10) days following the filing of that motion. cf. the Montana Administrative Procedure Act, esp. Sec. 2-4-702, MCA; and Commission Rules of Practice and Procedure, esp. 38-2.2(64)-P2750, ARM.